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**Title of the doctoral thesis:** *“The external dimension of EU immigration and asylum law: EU competences and legal instruments”*

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## SUMMARY OF THE SUBJECT

### **“THE EXTERNAL DIMENSION OF EU IMMIGRATION AND ASYLUM LAW: EU COMPETENCES AND LEGAL INSTRUMENTS”**

The external dimension of EU immigration and asylum policy is carried out through legal instruments characterized by a strong degree of extra-territorialisation: in fact, besides mechanisms provided by internal legislation (e.g. art. 25a reg. 2019/1155 introduces the possibility for the EU to adjust the application of certain provisions of the Visa Code depending on the level of cooperation of a third country with Member States on the readmission of irregular migrants), the vast majority of legal instruments typical of this field are aimed at establishing bilateral or multilateral relationships with third countries of origin or transit in order to obtain a more effective management of migration flows. These relationships are pursued through the conclusion of both EU international agreements following the procedure provided by art. 218 TFEU – whose aim is to create binding obligations upon the contracting Parties – and through a wide range of other instruments that, notwithstanding their different *nomen iuris*, tend to define themselves as non-binding instruments. The latter phenomenon, known as “informalization”, consists of an increasing use of soft law instruments to regulate the relationship between the EU and/or its Member States on one hand, and third countries on the other hand.

Thus, the main purpose of the thesis is to study the structure and the content of these different legal instruments in order firstly to infer from them which competences are attributed to the EU in the field of external action of immigration and asylum in the light of both the Treaties and the ECJ case-law and, secondly, to establish whether these competences are exclusive, concurrent or residual in nature. Notably, this is not without practical consequences: in fact, it will allow to assess whether and to what extent the EU is responsible for the implementation of the agreements and, eventually, for their incorrect application. Furthermore, it will be possible to evaluate to what extent there are *lacunae* in the system of EU competences in this field that would require some kind of reform.

As far as soft law legal acts are concerned, their analysis is necessary to understand their legal status, imputability and legal effects respectively. In addition, the compatibility

of soft law acts with the so-called structural principles of EU External Relations Law, with the rule of law and with the protection of fundamental rights of the people involved shall be evaluated, given that the Luxembourg Court stated that soft law acts adopted by the EU Institutions ought to respect the principle of conferral, the principle of interinstitutional balance and the objectives set out in art. 21(2) and 21(3) TUE (C-233/02; C-660/13).

Last but not least, understanding EU competences in this fields and the way in which they are exercised through various legal instruments is of utmost importance to assess the level of fundamental rights protection of the people involved offered by the instruments at stake. Hence, highly debated topics are tackled, such as the immunity of Frontex guards for operations conducted outside the territory of the European Union, the violations of fundamental rights occurred in the context of SAR operations, the usefulness and limits of disembarkation platforms and control centres and, finally, the opportunity to establish post-return control mechanisms.

The research is being conducted through an empirical methodology, that takes the aforementioned legal sources as a starting point to classify EU external competences in the field of migration and asylum according to their nature in order to draw the pertinent practical consequences.

## **OVERVIEW OF THE STRUCTURE OF THE DOCTORAL THESIS**

### **“THE EXTERNAL DIMENSION OF EU IMMIGRATION AND ASYLUM LAW: EU COMPETENCES AND LEGAL INSTRUMENTS”**

A brief introduction to the work is aimed at clarifying both the methodology followed and the main purposes of the doctoral research. Then, the milestones concerning the historical evolution of the external dimension of EU immigration and asylum law and policy since the Tampere European Council are recalled.

Besides some introductory remarks, the thesis is divided into four major parts. First and foremost, an accurate analysis and classification of EU external competences in the field of migration and asylum is provided, its starting point being EU primary law, namely the Treaties and the EU Charter of fundamental rights. In fact, the first part of the work covers on one hand issues such as the participation of the UK, Ireland and Denmark in the legal instruments typical of the EU immigration and asylum policy, the nexus between the external dimension of the EU immigration and asylum policy and other fields of EU External Relations – particularly the linkage of development cooperation with migration policies – and, broadly speaking, all the principles and objectives set out in the Treaties that contribute to shape the policy at stake. On the other hand, the extent to which the EU Charter of fundamental rights can be applied extraterritorially is examined, together with the obligation to respect fundamental rights as general principles of EU law stemming from art 6.3 TUE.

The subsequent parts of the work are devoted to analyze in depth all the legal instruments – both binding and non-binding or *soft* – at disposal of the European Union and its Member States in order to carry out an effective external policy in the field of immigration and asylum. Binding agreements are tackled in the first place, such as readmission agreements and readmission clauses contained in association and cooperation agreements, visa facilitation and visa exemption agreements and, finally, status agreements. A more detailed look at their content and structure brings out various related issues, such as the legal bases of these EU international agreements, the nature of EU competences in this field and its repercussions on the competence to conclude and

implement such international agreements. Moreover, the limits stemming from precedent international obligations weighing on the EU, the so called “subordination clauses” and the duty to respect international agreements concluded by the Member States are also relevant factors to be considered.

As far as non-binding or “other legal instruments” are concerned, again the study of their content and structure is an essential precondition for understanding whether they have legal value, to whom their conclusion is attributable to – in other words, who are the contracting Parties – and, consequently, who is responsible for both their implementation and non-implementation. Thus, this part of the work deals with working arrangements, regional and bilateral political dialogues, Mobility Partnership, Common Agendas on Migration and Mobility, Pilot Projects on legal migration and Regional Development and Protection Programs. Lastly, due consideration is given to the EU-Turkey Declaration of 2016 and to its legal nature, imputability and legal effects.

The final part of the thesis regards the impact of the instruments of the external dimension of EU immigration and asylum policy on human rights of the people concerned, in order to assess the responsibilities of the actors involved and suggest possible remedies to fundamental rights violations. Hence, highly debated topics are discussed, such as the immunity of Frontex guards, the fundamental rights respect limit in the context of SAR operations, the usefulness and limits of disembarkation platforms and control centres and, finally, the opportunity to establish post-return control mechanisms.